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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/623,439
Filing Date: December 04, 2000
Appellant(s): BAKER ET AL.

Phillip Articola
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/8/08 appealing from the Office action mailed 11/14/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

JP 60-246190 SUZUKI YASUYUKI ET AL 12-1985

Applicant's Admitted Prior Art, pp. 1-2, 9, 15, and 17.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-12 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yasuyuki et al (JP 60-246190) in view of AAPA.

Yasuyuki et al, in Figures 1-3, discloses a video signal switching system that is substantially the same system for providing continuous reception of a video signal from an on board camera in a mobile object 6 as it moves around a race track as specified in claims 1-12 and 18-20 of the present invention, comprising an on board video camera on the mobile object 6 for generating a video signal and a transmitter provided on the mobile object 6 for transmitting the video signal from the mobile object 6 on a first carrier frequency (e.g. frequencies 1-5 on lines R1 and R2 in Fig. 3); first and second receivers (μ1, μ2) that each receive the transmitted video signal on first carrier frequency, first and second receivers having at least partially overlapping detection areas (e.g. area between points A and B in Fig. 2) and being located at spaced apart locations about the race track (e.g. elements 2 and 3 in Fig. 2); a position detector 7 for indicative of the position of the mobile object 6 as the mobile object 6 moves around the race track; and a controller 9 located other than in the mobile object 6 for selecting and outputting the video signal received by the first of the first and second receivers (e.g. element 2 when car is in position A) in response to the position signal (e.g. weak carrier electric field delivered to third microwave signal receiver 3) and for thereafter selecting and outputting the video signal received by the second of the first and second receivers (e.g. element 3 when car is in position B) in response to change in the position signal

(e.g. weak carrier electric field delivered to second microwave signal receiver 2) as the mobile object 6 moves around the track (see p. 4 of the Yasuyuki et al translation, lines 9-15).

With respect to claims 2, 5-12, and 18-20, wherein the controller changes from selecting and outputting the signal received by the first receiver to selecting and outputting the signal received by the second receiver when the mobile object 6 is at a predetermined distance from the first receiver (e.g. solid vs. dashed lines in Fig. 2); wherein the transmitter can be controlled to transmit selectively on a plurality of frequencies (e.g. frequencies 1-5 on lines R1 and R2 in Fig. 3); wherein the transmission frequency of the transmitter is controlled by the controller 9; wherein the position detector 7 determines the position of the mobile object 6 based on information provided by a timing system 13 of the race track (e.g. between μ1 and μ2); a second on board video camera on a second mobile object and a second transmitter provided on the second mobile object, each transmitter simultaneously transmitting video signals to the receivers (e.g. other cars on track, not shown); wherein the receivers and the controller are interconnected by a network of first and second signal lines (e.g. solid and dashed); the output of each of the receivers is selectively connectable, under the control of the controller 9, to the first, the second or neither of the signal lines such that, in use, the output from one of the receivers is connected to the first signal line and the output of a second one of the receivers is connected to the second signal line; and the controller 9 outputs the signal on the signal line connected to the receiver receiving the selected video signal; a further output connected to the signal line not connected to the receiver

receiving the selected video signal (v1-v5); additional receivers (e.g. Fig. 1, 1-5) located at spaced apart locations about the race track for receiving the transmitted video signal, the placement and number of receivers sufficient to ensure that there are at least partially overlapping reception areas between adjacent receivers (e.g. Fig. 2, points A and B are received by 2 receivers) and that there is never a break in the reception of the transmitted video signal as the mobile object moves completely around the race track (Fig. 1); wherein the mobile object is a race car 6.

Although Yasuyuki et al discloses a position detector 7, it is noted Yasuyuki et al differs from the present invention in that it fails to particularly disclose any details of the position signal regarding the arrangement of antennas as specified in claims 1-12 and 18-20. AAPA however, on page 9, lines 5-17, page 15, lines 5-8, and page 17, lines 5-7, for examples, teaches the concept of such well known generation of a position signal using indications (e.g. GPS) other than parameters of the received video signal and carrier; and through the set up of helical antennas at the proper height from the ground.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, having both the references of Yasuyuki et al and AAPA before him/her, to exploit the well known position detection system and antenna arrangement as taught by AAPA through the base station within the system of Yasuyuki to provide accurate position information and the proper space and altitude antenna setup in order to move or receive the desired signals.

(10) Response to Argument

I.A. Claims 1-6, 8, 9, 12 and 18-20:

Appellant asserts on pages 7-8 of the Brief that Yasuyuki et al fails to disclose the selection is in response to the position signal and in response to change in the position signal. However, Figure 2 and page 4, lines 9-15 of the Yasuyuki et al translation states that the controller selects the receivers 2 and 3 based on the carrier electric field being delivered to the receivers. As an illustrative example, Yasuyuki et al discloses at position A, receiver 2 is selected in response to the weak carrier electric field being delivered to receiver 3. Conversely, after the mobile object changes to position B, receiver 3 is selected in response to the weak carrier electric field being delivered to receiver 2.

In response to appellant's arguments on pages 8-9 of the Brief against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In particular, appellant asserts that neither Yasuyuki et al nor AAPA discloses a position detector that generates a separate position signal for selecting receivers, it was clearly stated in the previous office action that Yasuyuki et al already discloses a position detector 7 in Figure 3. It is true that AAPA does not disclose using position information to select receivers as that claimed by the Applicant. However, examiner does not rely on AAPA to teach such capabilities because such carrier electric field signal other than the video image signals is already disclosed in Yasuyuki et al. AAPA merely provides the motivation that it would have been obvious to one of ordinary skill in the art at the time the invention was made, having both

references of Yasuyuki et al and AAPA before him/her, to modify the race track system of Yasuyuki et al to be upgraded as a more accurate positioning system by simply utilizing the well known Global Positioning System (GPS) separately from the video signals to determine the position of the cars to include the same tracking techniques as specified in claims 1-12 and 18-20. With an upgraded tracking system, one of ordinary skill in the art would have had no difficulty in applying subsequent signal selection from the desired receivers (1-5) by the controller, as illustrated in Figure 1 of Yasuyuki et al, since selecting the clearest image signal for processing is a necessary and well known technique for any tracking system.

In response to appellant's argument on page 9 of the Brief that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, even if the suggestion for combination is not particularly specified in either Yasuyuki et al or AAPA, the question in the test for combining references in a section 103 rejection is not solely relied on what the individual reference expressly teaches. In re McLaughlin, 170 USPQ 209-213:

> "It should be too well settled now to require citation or discussion that the test for combining references is not what the individual references themselves suggest but rather what the combination of disclosures taken as a whole would

> suggest to one of ordinary skill in the art. Any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made and does not include knowledge gleaned only from applicant's disclosure, such a reconstruction is proper."

Therefore, even though neither Yasuyuki et al nor AAPA taken singularly for claims 1-12 and 18-20 suggests the combination as claimed, the combination of Yasuyuki et al and AAPA, for claims 1-12 and 18-20, taken as a whole would have been obvious to one of ordinary skill in the art as previously set forth in the last office action

In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

I.B. Claim 7:

With respect to claim 7, appellant asserts Yasuyuki et al fails to disclose a timing system. However, Figure 3 of Yasuyuki et al illustrates 5 different frequencies used by receivers 1-5. One of ordinary skill in the art would have had no difficulty in recognizing that time is merely the inverse of frequency. Furthermore, by using writing clock generator circuit 13 and clock generator circuit 18 to determine the appropriate time to

change from one receiver to the next based upon the position of the car, it is submitted that the system of Yasuyuki et al meets the definition of a timing system in its broadest reasonable sense, consistent with appellant's disclosure (e.g. p. 9, lines 5-6).

I.C. Claims 10 and 11:

With respect to claims 10-11, appellant asserts Yasuyuki et al fails to disclose a network comprising first and second signal lines. However, as conceded by the appellant, Figure 2 of Yasuyuki et al illustrates a network comprising first and second signal paths. By selecting the proper receiver based on the position signal, the system of Yasuyuki et al forms a network. Furthermore, since appellant's own invention is directed to RF signal paths to and from different antennas, it is submitted that the signal paths of Yasuyuki et al meet the definition of signal lines in its broadest reasonable sense, consistent with appellant's disclosure.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

(12) Conclusion

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Young Lee/

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